

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express
Priority Mail Express Contract 31

Docket No. MC2016-61

Competitive Product Prices
Priority Mail Express Contract 31 (MC2016-61)
Negotiated Service Agreement

Docket No. CP2016-76

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE REQUEST
TO ADD PRIORITY MAIL EXPRESS CONTRACT 31
TO THE COMPETITIVE PRODUCT LIST

(December 28, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2936.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express Contract 31 to the competitive product list.² The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

¹ PRC Order No. 2936, Notice and Order Concerning the Addition of Priority Mail Express Contract 31 to the Competitive Product List, December 28, 2015.

² Request of the United States Postal Service to Add Priority Mail Express Contract 31 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 24, 2015 (Request).

According to the Postal Service, Priority Mail Express Contract 31 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Request* at 1. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors’ Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification provides support for adding Priority Mail Express Mail Contract 31 to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). *Request* at 1 and 2.

The contract’s effective date will be set 2 business days after receiving final regulatory approval by the Commission. *Attachment B* at 3. The contract is to expire 3 years from the effective date, unless (1) terminated by either party with 30 days’ notice to the other Party in writing, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent Agreement between the Parties, (4) ordered by the Commission or a court, or (5) required to comply with subsequently enacted legislation. *Id.* at 3.

COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service’s Request. Based upon that review, the Public Representative concludes that Priority Mail Express Contract 31 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract will generate sufficient revenues to cover costs, at least in its first year, and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3652, the Postal Service requests that Priority Mail Express Contract 31 be added to the competitive product list. 39 U.S.C. § 3652 requires the Commission to consider whether “the Postal Service

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3652(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3652(b)(1). *Attachment D*. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Express Contract 31 to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service’s Request, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs during its first year.

As noted above, however, the instant contract is expected to remain in effect for a period of 3 years. The Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) during the 3-year period of the contract. This concern is somewhat mitigated by the fact that the terms of the instant contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover cost during years 2 and 3. Consequently, the best that can be said is that the instant contract satisfies the requirements of section 3633(a) during the first year. Of course, the Commission has an opportunity to review the financial results of the instant contract for compliance with 39 U.S.C. § 3633(a) each year of the contract in the Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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